

11.52.100 Prohibited smoking areas.

- A. No person shall smoke in a public place or at a public meeting; provided, however, smoking is permitted only in designated smoking areas. Designated smoking areas may not include any areas where smoking is prohibited by any fire, health or safety code or any other federal, state or local law or regulation. Any public place may designate smoking areas by exercising option 1 or option 2 below. Any food service establishment with a valid Overland Park Health Permit must, unless they exercise option 1 or option 2 below, post signage, at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height which states the following:

"THIS IS A SMOKE-FREE ESTABLISHMENT.
Smoking is not permitted on these premises." and
"Pursuant to OPMC 11.52.100."

Any public place, other than a food service establishment, that does not designate smoking areas and does not exercise option 1 or option 2 below, is not required to post this signage.

The owner, operator, manager or other person in control of the public place or public meeting may take all reasonable steps necessary to enforce the terms of this ordinance within that public place or meeting, including, without being limited to, giving personal notice to the alleged violator that they are acting contrary to local law and are subject to receiving a citation to appear in court. City officers, including, without being limited to, Health and Environment personnel, may serve a notice to appear upon a person accused of smoking in violation of this chapter.

- B. If any establishment, food service or otherwise, chooses to designate smoking areas, the owner, operator, manager or other person in control of the public place may elect one of the following options with respect to smoking on the premises:

Option 1. Smoking Establishment. The establishment may elect to designate itself as a smoking establishment. The establishment may designate smoking and non-smoking areas as shall be reasonably necessary to meet the needs of its guests and patrons, at its discretion, provided that the entire customer service area may not be designated as a smoking area, and further provided that any designated smoking area:

1. fully utilizes existing physical barriers and ventilation systems to

maximize the separation between designated smoking areas and non-smoking areas. Any such establishments created after the effective date of this ordinance shall make all reasonable efforts to maximize the separation between designated smoking areas and non-smoking areas; and

2. does not contain the only common facilities in the premises available for the general public or employee use, such as points of sale or service, rest rooms, telephones, lounges and other such facilities; and
3. is not an area of the premises that guests, patrons or employees are required to pass through in order to access either non-smoking areas of the premises or the only available public facilities.

In order to qualify for the designation as a Smoking Establishment, any food service establishment with a valid Overland Park Health Permit must post the following signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height which states the following:

"THIS IS A SMOKING ESTABLISHMENT.
Although smoking is permitted only in a certain designated area, secondhand **tobacco** smoke is circulated throughout the entire premises, including those areas designated as non-smoking. The U.S. Environmental Protection Agency has determined that secondhand **tobacco** smoke is harmful to your health."

Public places other than food service establishments are not required to post this entryway signage. Any establishment, food service or otherwise, exercising this option shall also post interior signage at a height and location sufficient to conspicuously identify non-smoking areas. The primary lettering of such signs shall be no less than one inch in height and shall use the words "No Smoking" and shall use also include the international no smoking symbol, and shall also state "Pursuant to OPMC 11.52.100."

Option 2. Smoking Restricted Establishment. The establishment may elect to designate itself a smoking restricted establishment. Smoking may be permitted in a designated public area of the establishment provided the area:

1. fully utilizes existing physical barriers and ventilation systems to maximize the separation between designated smoking areas and non-smoking areas. Any such establishments created after the effective

date of this ordinance shall make all reasonable efforts to maximize the separation between designated smoking areas and non-smoking areas; and

2. does not contain the only common facilities in the premises available for the general public or employee use, such as rest rooms, telephones, lounges and other such facilities; and
3. is not an area of the premises that guests, patrons or employees are required to pass through in order to access either non-smoking areas of the premises or the only available public facilities; and
4. is enclosed; and has a separate ventilation/filtration system where substantially all of the smoke and carcinogenic matter in the air is removed electronically or mechanically, or all of the exhaust air from the room's air circulation system is vented to the outside and is not mixed with air circulating within any adjacent non-smoking area of the premises; and further provided that the entire customer service area may not be designated as a smoking area.

In order to qualify for the designation as a Smoke-Restricted Establishment, any food service establishment with a valid Overland Park Health Permit must post the following signage at a height and location conspicuous to persons entering the establishment, with primary lettering of not less than one inch in height, which states the following:

"THIS IS A SMOKE-RESTRICTED
ESTABLISHMENT. Smoking is permitted only in
certain separately ventilated and designated areas.
Secondhand **tobacco** smoke is not circulated in the
designated non-smoking areas."

Public places other than food service establishments are not required to post this entryway signage. Any establishment, food service or otherwise, exercising this option shall also post signage at a height and location sufficient to conspicuously identify non-smoking areas. The primary lettering of such signs shall be no less than one inch in height and shall use the words "No Smoking" and shall also include the international no smoking symbol, and state "Pursuant to OPMC 11.52.100."

- C. Smoking may be permitted in a theatrical production when such smoking is part of the production, provided the responsible person has obtained permission from the local fire official having jurisdiction to allow smoking as part of the production.
- D. Smoking may be permitted in retail establishments where the principal business is the sale of **tobacco** products, provided, however, that the premises is

enclosed; and has a separate ventilation /filtration system where substantially all of the smoke and carcinogenic matter in the air is removed electronically or mechanically, or all of the exhaust air from the air circulation system is vented to the outside and is not mixed with air circulating in any adjacent premises.

- E. Smoking is totally prohibited within elevators available for use by the general public; rest rooms available for use by the general public; common areas of indoor shopping malls; food and drink customer service areas located inside indoor shopping malls which are not enclosed and separate from common areas of the indoor shopping mall; common areas of hospitals, medical or health care clinics, and nursing homes; common areas of courtrooms, and municipal, county or state buildings, schools or other governmental facilities; public transit vehicles; school buses; the entire municipal pool facilities and premises, including all outdoor areas that are a part of such facilities and premises; waiting rooms, reception areas and lobbies of any public place; fast food establishments and within the entire premises of all facilities owned or operated by the City of Overland Park.

(History: Ord. NS-2182 §2, 2000; NS-1914 §2, 95; NS-1836 §2, 94; POC-1462 §2, 87; NS-1283 §2, 84)